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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,488	11/30/2001	Richard Lunak	DB000975-000	6369

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EXAMINER

CRAWFORD, GENE O

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,488

Applicant(s)

LUNAK ET AL.

Examiner

Gene O. Crawford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 14-32 in Paper No. 10 is acknowledged.

Specification

2. The abstract of the disclosure is objected to because the sentence "Various methods and forms of restocking packages are also disclosed" should be deleted. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14, 19, 24 and 29 all recite the computer is responsive to "data representative of a plurality of picks." However, it is unclear from the claim language what "picks" and what "data" applicant is referring to. The claims mention a carousel and systems in the preambles but do not denote what the carousel and systems are being used in combination with. Applicant appears to have incorporated information in the body of the claims that should also appear in the preamble. Other examples of this

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are found in claims 14, 21, 25 and 30 where the claims recite "more than one order"; and in claims 16, 26 and 29 where "a dispensing device" is recited. It appears applicant intends to claim the carousel of claim 14 and the systems of claims 19, 24 and 29 in combination with a dispensing device where orders are picked therefrom according to patient data, however applicant has not done so in the claims as presented, leaving the claims unclear for the reasons stated above. Hence the claims have been examined with regard to the prior art as best understood by the examiner.

Claim 16 recites "the computer is responsive to data representative of picks for more than one dispensing device." It is not understood what applicant is trying to claim by the recitation. Hence the claim has not been examined with regard to the prior art.

Claim 19 recites the limitation "said processor" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 14, 15, 29 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson et al.

The carousel and system therefor for picking medical products from a dispensing device disclosed by Wilson et al. includes all the claimed features and in particular includes: **(claim 14)** a drive track 47, 48; a plurality of bins 80, 81 arranged into rows and driven by the track 47, 48, a drive mechanism 50 for driving the track 47, 48; a sensor 78 for sensing the position of the rows of bins 80, 81 (column 4, lines 52-58); a computer 74 responsive to the sensor 78 and **(claim 30)** data representative of a plurality of picks for more than one order, in that not all rows on a bin are patient specific but can be medication specific allowing for picks for more than one patient (column 6, lines 5-6); **(claim 15)** the computer being responsive to data representative of picks of more than one patient (column 5, lines 36-39); and **(claim 29)** a restocking package configured to be inserted into a dispensing device (column 6, lines 20-35).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 19-21 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. in view of Arnold et al.

With regard to claims 19-21, Wilson et al. includes all the claimed features but does not disclose a plurality of storage locations each having an indicator, with the computer controlling the storage location indicators. However, Arnold et al. discloses

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the broad teaching of providing a medication dispensing cart having a computer and a plurality of storage locations 104 having indicators 38 that are controlled by the computer. It would have been obvious to one of ordinary skill in the art to provide the medication dispensing cart of Wilson et al. with an auxiliary storage section having indicators controlled by the computer to allow for controlled access to the storage location and easy location of needed medication stored within the storage locations as taught by Arnold et al.

With regard to claims 24-26, Wilson et al. includes all the claimed features including a hand held device 82 for communicating to the computer 74 when a pick is completed and for displaying another pick (column 5, lines 40-52 and column 6, lines 7-15), but does not disclose a printer responsive to the computer. However, Arnold et al. discloses the broad teaching of providing a medication dispensing cart having a computer with a printer responsive thereto (column 8, lines 31-33). It would have been obvious to one of ordinary skill in the art to provide the computer of Wilson et al. have a printer for printing restock list, patient reports and the like as taught by Arnold et al.

Allowable Subject Matter

9. Claims 17, 18, 22, 23, 27, 28, 31 and 32 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: medication dispenser and system therefor having a carousel with a plurality of

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bins arranged into rows including the unique features of 'having indicia located adjacent each row as each row is brought into a pick position' in combination with the rest of the claim language is not taught or fairly suggested by the prior art.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are cited to show the art with respect to dispensers having carousels with a plurality of bins arranged into rows: Robey, Humm et al., Otsuka et al., Schindler, and Johnston.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 703/308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are 703/305-3597 for regular communications and 703/305-3597 for After Final communications.

gc
June 10, 2003

